

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Julian Kiser,

Case No. 3:18 CV 2347

Petitioner,

ORDER ADOPTING
REPORT AND RECOMMENDATION

-vs-

JUDGE JACK ZOUHARY

Warden Lyneal Wainwright,

Respondent.

Petitioner *pro se* Julian Kiser seeks a Writ of Habeas Corpus under 28 U.S.C. § 2254 (Doc. 3). He is currently serving a ten-year sentence after being convicted of trafficking in cocaine, with a major drug-offender specification, in the Sandusky County, Ohio Court of Common Pleas (Doc. 10 at 4).

After two jury trials, multiple appeals, and a resentencing (*id.* at 2–10), Kiser filed his Petition before this Court, which was automatically referred to Magistrate Judge Kathleen Burke under Local Civil Rule 72.2(b)(2) (Non-Doc. Entry 10/09/2018). Respondent filed a Return of Writ (Doc. 6); Kiser filed a Traverse (Doc. 8). Judge Burke then issued a Report and Recommendation (“R&R”), concluding the Petition should be dismissed because Kiser fails to demonstrate that the state appellate court’s decision was based on an unreasonable determination of the facts or an unreasonable application of federal law (Doc. 10 at 17). This Court adopts the R&R in its entirety. *See Hill v. Duriron Co.*, 656 F.2d 1208 (6th Cir. 1981).

Although this Court reviews *de novo* any portions of an R&R to which a party timely objects under 28 U.S.C. § 636(b)(1), failure to timely object waives district and appellate court review of the R&R. *See Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995); *United States v. Walters*, 638 F.2d 947, 950 (6th Cir. 1981). The R&R notified the parties that failure to object would result in waiver (Doc. 10 at 18). *See Walters*, 638 F.2d at 950. Neither party has objected, and the deadline for objections has passed. This Court therefore adopts the R&R (Doc. 10) in its entirety.

The Petition (Doc. 3) is dismissed. There is no basis upon which to issue a certificate of appealability. *See* 28 U.S.C. § 2253(c)(2). Further, an appeal from this Order could not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3).

IT IS SO ORDERED.

s/ Jack Zouhary
JACK ZOUHARY
U. S. DISTRICT JUDGE

November 23, 2020